

BOIES SCHILLER FLEXNER LLP

David Boies (admitted *pro hac vice*)
333 Main Street
Armonk, NY 10504
Tel: (914) 749-8200
dboies@bsfllp.com

Mark C. Mao, CA Bar No. 236165
Beko Reblitz-Richardson, CA Bar No. 238027
Erika Nyborg-Burch, CA Bar No. 342125
44 Montgomery St., 41st Floor
San Francisco, CA 94104
Tel.: (415) 293-6800
mmao@bsfllp.com
brichardson@bsfllp.com
enyborg-burch@bsfllp.com

James Lee (admitted *pro hac vice*)
Rossana Baeza (admitted *pro hac vice*)
100 SE 2nd St., 28th Floor
Miami, FL 33131
Tel.: (305) 539-8400
jlee@bsfllp.com
rbaeza@bsfllp.com

Alison L. Anderson, CA Bar No. 275334
725 S Figueroa St., 31st Floor
Los Angeles, CA 90017
Tel.: (213) 995-5720
alanderson@bsfllp.com

SUSMAN GODFREY L.L.P.

William C. Carmody (admitted *pro hac vice*)
Shawn J. Rabin (admitted *pro hac vice*)
Steven M. Shepard (admitted *pro hac vice*)
Alexander Frawley (admitted *pro hac vice*)
1301 Avenue of the Americas, 32nd Floor
New York, NY 10019
Tel.: (212) 336-8330
bcarmody@susmangodfrey.com
srabin@susmangodfrey.com
sshepard@susmangodfrey.com
afrawley@susmangodfrey.com

Amanda K. Bonn, CA Bar No. 270891
1900 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067
Tel.: (310) 789-3100
abonn@susmangodfrey.com

MORGAN & MORGAN

John A. Yanchunis (admitted *pro hac vice*)
Ryan J. McGee (admitted *pro hac vice*)
201 N. Franklin Street, 7th Floor
Tampa, FL 33602
Tel.: (813) 223-5505
jyanchunis@forthepeople.com
rmcgee@forthepeople.com

Michael F. Ram, CA Bar No. 104805
711 Van Ness Ave, Suite 500
San Francisco, CA 94102
Tel: (415) 358-6913
mram@forthepeople.com

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all similarly
situated,

Plaintiffs,

vs.

GOOGLE LLC,

Defendant.

Case No.: 4:20-cv-03664-YGR-SVK

**DECLARATION OF MARK MAO IN
SUPPORT OF PLAINTIFFS'
ADMINISTRATIVE MOTION FOR
RELIEF RE: GOOGLE'S PRODUCTION
OF DOCUMENTS IMPROPERLY
WITHHELD AS PRIVILEGED**

Referral: The Honorable Susan van Keulen

DECLARATION OF MARK MAO

1
2 1. I am a partner with the law firm of Boies Schiller Flexner LLP, counsel for Plaintiffs
3 in this matter. I am an attorney at law duly licensed to practice before all courts of the State of
4 California. I have personal knowledge of the matters set forth herein and am competent to testify.

5 2. I submit this Declaration in support of Plaintiffs' Administrative Motion Regarding
6 Google's Production of Documents Improperly Withheld as Privileged.

7 3. On July 24, 2021, Google served its first privilege log.

8 4. On August 29, 2021, Plaintiffs sent Google a letter (attached as Exhibit B)
9 concerning that first Google privilege log, noting in part on page 2:

- 10
 - Google appears to be withholding numerous ordinary business communications
 - 11 between Google employees that do not involve attorneys.
 - 12 • Google's log is replete with entries where in-house counsel is identified in the
 - 13 "Recipient(s)" column, but the attorneys are just one of many recipients, without
 - 14 specifying whether these are communications where the attorney was just copied
 - 15 on the email without providing any input or actual legal advice.

16 5. On August 13, 2021, Google served a second privilege log.

17 6. On September 8, 2021, Plaintiffs sent a letter (attached as Exhibit C) concerning
18 that second privilege log, noting in part on page 6 "there appears to be a pattern among Google
19 employees – including Google's top executives – of improperly labeling non-privileged emails
20 and documents as 'privileged' and/or copying attorneys on non-privileged emails."

21 7. The parties raised certain issues regarding privilege disputes in their September 24,
22 2021 joint discovery dispute chart. Dkt. 281.

23 8. On September 30, 2021, during the ensuing discovery hearing with Your Honor,
24 Plaintiffs said to the Court: "What we are seeing is that Google is withholding and redacting
25 categories of documents that appear simply not to be privileged. They are technical documents
26 that involve only engineers and no lawyers." Dkt. 333-3 at 226.

27 9. On October 19, 2021, Plaintiffs moved for an order requiring Google to re-review
28 certain categories of documents. Dkt. 296 & 296-1. In response, Google represented that its
privilege review was "robust" and described Plaintiffs' concerns as "rife with half-baked disputes

1 ill-suited for court intervention.” Dkt. 296 at 5. That motion resulted in Plaintiffs receiving
2 hundreds of re-review challenges, which Plaintiffs exercised over the ensuing months. Dkt. 307.

3 10. As noted by the Court, Plaintiffs’ privilege challenges resulted in “the significant
4 correction rate of 25% in this case,” which “g[a]ve the Court pause.” Dkt. 522 at 2.

5 11. As a result of Plaintiffs’ privilege challenges, Google produced 208 documents to
6 Plaintiffs in February and March 2022.

7 12. This Court then ordered Google to re-review 1,000 additional documents (Dkt.
8 542), from which Google corrected 371 of its privilege designations and produced 255 unique
9 documents in April 2022 (Dkt. 566).

10 13. This Court subsequently ordered Google to re-review all documents that fell into
11 the categories Plaintiffs had flagged. Dkt. 605.

12 14. As a result of that re-review, Google produced 907 documents in June and July
13 2022.

14 15. My colleague contacted counsel for Google on August 2 to seek Google’s position
15 on Plaintiffs’ Administrative Motion and to offer to meet and confer. Google’s counsel asked for
16 a list of documents for which Plaintiffs believe they have been prejudiced. Plaintiffs promptly
17 provided the list of 15 documents summarized in Exhibit A, but clarified that the relief they seek
18 should apply to all documents produced after the close of fact discovery. Google has not yet
19 responded to the substance of Plaintiffs’ requested relief. Google asked that the parties postpone
20 any briefing until late August or September. Plaintiffs explained that the relief they request is
21 relevant to class certification, which is why Plaintiffs seek to raise this issue with the Court now.

22 16. Attached hereto as **Exhibit A** is a chart summarizing fifteen documents that Google
23 had withheld as privileged and as a result only produced to Plaintiffs within the last three months,
24 after the close of fact discovery, pursuant to this Court’s re-review orders.

25 17. Attached hereto as **Exhibit B** is a true and correct copy of an August 9, 2021 letter
26 from Plaintiffs to Google.
27
28

1 18. Attached hereto as **Exhibit C** is a true and correct excerpt of a September 8, 2021
2 letter from Plaintiffs to Google. Plaintiffs deleted the missing portions of this letter because they
3 discussed a document that Google ended up clawing back.

4 19. Attached hereto as **Exhibit 1** is a true and correct copy of a document that Google
5 produced to Plaintiffs on July 21, 2022, labeled GOOG-BRWN-00857647.

6 20. Attached hereto as **Exhibit 2** is a true and correct copy of a document that Google
7 produced to Plaintiffs on July 6, 2022, labeled GOOG-BRWN-00855317.

8 21. Attached hereto as **Exhibit 3** is a true and correct copy of a document that Google
9 produced to Plaintiffs on July 22, 2022, labeled GOOG-CABR-05949445.

10 22. Attached hereto as **Exhibit 4** is a true and correct copy of a document that Google
11 produced to Plaintiffs on July 6, 2022, labeled GOOG-BRWN-00856066.

12 23. Attached hereto as **Exhibit 5** is a true and correct copy of a document that Google
13 produced to Plaintiffs on July 6, 2022, labeled GOOG-BRWN-00856578.

14 24. Attached hereto as **Exhibit 6** is a true and correct copy of a document that Google
15 produced to Plaintiffs on July 21, 2022, labeled GOOG-BRWN-00857642.

16 25. Attached hereto as **Exhibit 7** is a true and correct copy of a document that Google
17 produced to Plaintiffs on July 19, 2022, labeled GOOG-CABR-05949225.

18 26. Attached hereto as **Exhibit 8** is a true and correct copy of a document that Google
19 produced to Plaintiffs on April 29, 2022, labeled GOOG-BRWN-00848778.

20 27. Attached hereto as **Exhibit 9** is a true and correct copy of a document that Google
21 produced to Plaintiffs on April 29, 2022, labeled GOOG-CABR-05886497.

22 28. Attached hereto as **Exhibit 10** is a true and correct copy of a document that Google
23 produced to Plaintiffs on April 29, 2022, labeled GOOG-BRWN-00848723.

24 29. Attached hereto as **Exhibit 11** is a true and correct copy of a document that Google
25 produced to Plaintiffs on April 29, 2022, labeled GOOG-CABR-04780837.R.

26 30. Attached hereto as **Exhibit 12** is a true and correct copy of a document that Google
27 produced to Plaintiffs April 29, 2022, labeled GOOG-CABR-05888096.
28

31. Attached hereto as **Exhibit 13** is a true and correct copy of a document that Google produced to Plaintiffs on April 29, 2022, labeled GOOG-BRWN-00853326.

32. Attached hereto as **Exhibit 14** is a true and correct copy of a document that Google produced to Plaintiffs on April 29, 2022, labeled GOOG-CABR-05894563.

33. Attached hereto as **Exhibit 15** is a true and correct copy of a document that Google produced to Plaintiffs on April 29, 2022, labeled GOOG-BRWN-00850441.

34. Attached hereto as **Exhibit 16** is a true and correct copy of an excerpt from Google's April 15, 2022 Expert Report of On Amir.

35. Attached hereto as **Exhibit 17** is a true and correct copy of an excerpt from Google's May 27, 2022 Expert Report of Bruce Strombom.

36. Attached hereto as **Exhibit 18** is a true and correct copy of an excerpt from Google's June 7, 2022 Expert Report of Paul Schwartz.

37. Attached hereto as **Exhibit 19** is a true and correct copy of an excerpt from Google's April 15, 2022 Expert Report of Georgios Zervas.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 8th day of August, 2022, at San Francisco, California.

/s/ *Mark Mao*